

FIRST REGULAR SESSION

SENATE BILL NO. 336

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR RUPP.

Read 1st time February 9, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

1777S.011

AN ACT

To amend chapter 375, RSMo, by adding thereto one new section relating to the right of an insurance company to contest insurance coverage in certain judicial proceedings.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 375, RSMo, is amended by adding thereto one new section, to be known as section 375.925, to read as follows:

375.925. 1. If any suit is filed in the courts of this state which may result in an insurer becoming obligated to make a payment under a contract of insurance, and such insurer contests the applicability of its coverages to the facts pled in that action, it shall:

(1) Deny coverage to its insured in a clear and unequivocal communication; or

(2) Notify its insured that:

(a) It contests the applicability of its coverages to the facts pled in that action;

(b) The insured may select legal counsel to defend the action;

(c) Such counsel will be paid by the insurer until the applicability of its coverages is finally decided; and

(d) It will proceed as set forth in subsection 3 of this section.

2. If the insurer elects to proceed in the manner prescribed in subdivision (1) of subsection 1 of this section, the insured may proceed to defend the suit in any manner including entering into an agreement with the adverse party to allow a judgment to be taken in the case. Such action shall not constitute a breach of any agreement to cooperate contained in the policy of insurance.

3. If the insurer elects to proceed in the manner prescribed in

21 subdivision (2) of subsection 1 of this section, it shall:

22 (1) Within forty-five days after its first notice of the actual filing
23 of the lawsuit against the insured, file a separate lawsuit for a
24 declaratory judgment to determine the applicability of its coverages;
25 and

26 (2) Agree to pay a reasonable fee for legal services rendered on
27 behalf of its insured in defending that declaratory judgment action,
28 irrespective of its outcome.

29 4. If the insurer proceeds in accordance with subdivision (2) of
30 subsection 1 and subsection 3 of this section, the insured may not settle
31 the suit, or otherwise make an agreement with the adverse party
32 regarding any subsequent proceedings in the suit including, but not
33 limited to, the evidence to be admitted, objections thereto, arguments,
34 and any other aspect of the defense against the claim of the adverse
35 party, or the terms of any judgment, unless such action is specifically
36 authorized in writing by the insurer. An insurer's exercise of its rights
37 under subdivision (2) of subsection 1 of this section shall not constitute
38 a breach of its contract of insurance, either present or anticipatory.

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